

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

JAIME GARCIA, et ux.

*

Plaintiffs

*

Civil No.: BEL 01 CV 0103

v.

*

RONALD D. KIRSTIEN, et al.

*

Defendants

*

* * * * *

Memorandum of Plaintiffs in Opposition to Motion to Strike of Defendants

The Plaintiffs, through their undersigned counsel, oppose Defendants Motion to Strike, and state as follows:

1. Defendants appear to be ignoring an important well established legal principle that is applicable to the issues in this case, including, the purchase of the Chef Garcia business by Mr. Rothstein and Mr. Kirstien at bankruptcy sale, and the payments to Mr. Habeck that were larger than the existing written contract. Such transactions between officers and directors and the corporation, under applicable law, are always closely scrutinized and will be nullified if unfair. Importantly, the burden of proof, that the transactions are fair, adequate and equitable rests upon the officers and directors participating in the transaction. See Chesapeake Construction v. Rodman, 256 Md. 531 (1970).

2. The fact that the burden of proof rests upon Defendants on virtually all issues in this case is particularly significant where not one single document has been produced by Defendant Habeck on any subject, and no document has been produced by Defendants Rothstein and Kirstien reflecting the present existence of Chef Garcia, Inc., a Maryland Corporation, as represented to the Court on May 6, 2004, as being the corporate entity carrying on the business purchased at auction by Defendants Rothstein and Kirstien. Our subsequent search after the May 6, 2004 hearing reveals that there is no Maryland Corporation with the name of Chef Garcia, Inc. See attached Exhibit 1. In fact, a search of the Internet reveals another company dealing with the Chef Garcia product line, with Marjorie Robinson, (employee and close associate of Defendant Habeck), as manager. See attached Exhibit 2. A further document from the State of Virginia shows that Stonewall Services, Inc. has its principal office in Maryland at the address of Defendants Kirstien and Rothstein. See attached Exhibits 3 and 4. Attached hereto as Exhibit 5 is a document produced by Defendants Kirstien and Rothstein showing that they are equal owners of an unincorporated entity, taking over the business of the Plaintiffs. Another document coming from the files of Defendants Kirstien and Rothstein shows actual and forecast sales of the year 1999, reflecting as if it were one company, the sales for both the bankrupt entity and the new entity owned by Rothstein and Kirstien. See attached Exhibit 6. Exhibit 7 attached hereto shows profit and loss for the same entity for 1999.

Comparing the exhibits one can see that the annual sales for the unincorporated entity owned 50/50 by Defendants Rothstein and Kirstien are in the neighborhood of \$2,000,000.00 plus dollars, and the annual sales for the entity known as Stonewall

Services, Inc. is roughly 25% of that figure. One can easily infer from these documents, and from the fact that Defendants Rothstein and Kirstien caused the wrong information to be given to the Court on May 6, 2004, that Rothstein and Kirstien directly own, fifty percent each, the former Chef Garcia business, and that Ms. Robinson and her employer, Defendant Habeck, receive approximately 25% of the sales of the new unincorporated entity through Stonewall Services, Inc.

We request that the motion to strike be denied, that the summary judgment motions be denied and that the trial date remain as scheduled.

Respectfully submitted,

_____/s/_____
David F. Albright, Esq. (01454)
Albright & Goertemiller, LLC
120 E. Baltimore St. Suite 2150
Baltimore, MD 21202
Attorney for Plaintiffs

**Maryland Department of Assessments and Taxation 4****Taxpayer Services Division**

301 West Preston Street W Baltimore, Maryland 21201

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Taxpayer Services Division**Charter Search Results for: CHEF GARCIA, INC%****No Information available.**

There are no records for this query.

EXHIBIT

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Decide with Confidence

U.S. Reports

Full Record 8

Stonewall Services LLC

(doing business as: "Chef Garcia Mexican Foods")
3090 Brickhouse CT
Virginia Beach VA 23452-6859

D&B D-U-N-S Number: 07-331-6320

Phone: (757) 631-1164

County: VIRGINIA BEACH (CITY)

Metropolitan Statistical Area: Norfolk-Virginia Beach-Newport News, Va-

Year Started: 1999

Annual Sales: \$ 550,000.00 (Last Revision 01/04/2003)

Number of Employees here: 3

Number of Employees total: 3

Business: Wholesales Mexican Foods

Primary SIC:

5141, Groceries, General Line

51410000, Groceries, general line

This is a:

Small Business

Officers and Executives:

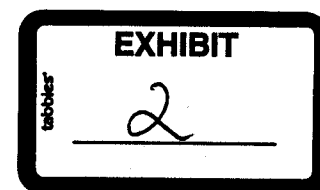
Manager: Marjorie Robertson, Manager

View a [receipt](#) for this profile.

Charges for the current search: \$5.00

(Final charges to your credit card will include applicable sales tax.)

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Commonwealth
of Virginia



State
Corporation
Commission

Enter

Signoff

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Print

WEB#243
TCP00037 LLC#3220 CIS
LLC ID: T019833 - 5 STATUS: 00 ACTIVE 05/24/04
LLC NAME: Stonewall Services LLC 12:00:35
STATUS DATE: 12/14/01

DATE OF FILING: 12/14/2001 PERIOD OF DURATION: 99/99/9999 INDUSTRY CODE: 00
STATE OF FILING: MD MARYLAND MERGER INDICATOR:

CONVERSION INDICATOR:

P R I N C I P A L O F F I C E A D D R E S S

STREET: 1657 CROFT BLVD

CITY: CROFTON

STATE: MD ZIP: 21114-0000

R E G I S T E R E D A G E N T I N F O R M A T I O N

R/A NAME: CT CORPORATION SYSTEM

STREET: 4701 COX ROAD SUITE 301

CITY: GLEN ALLEN

STATE: VA ZIP: 23060-6802

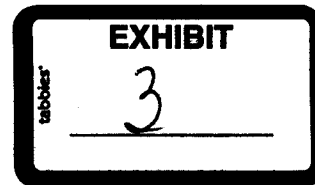
R/A STATUS: 5 CORP/LLC/LLLP R EFF DATE: 01/05/04 LOC: 143 HENRICO COUNTY


YEAR FEES PENALTY INTEREST BALANCE

03 50.00

COMMAND:

NOTE: Function Key usage varies depending on the Application Screen.
For specifics, refer to Function Key Documentation.



**Maryland Department of Assessments and Taxation 2**
Taxpayer Services Division
301 West Preston Street W Baltimore, Maryland 21201

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(Charter/Personal Property) [New Search](#) | [Get Forms](#) | [Certificate of Status](#) | [SDAT](#)
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Taxpayer Services Division

Entity Name: STONEWALL SERVICES LLC
Dept. ID #: W05045463



General Information | **Amendments** | **Personal Property** | **Certificate of Status**

NOTICE ABOUT IMAGE AVAILABILITY AND ACCURACY

Page 1 of 1

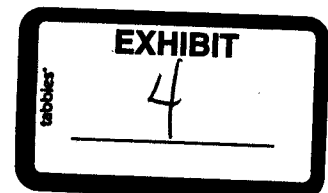
Description	Date Filed	Time	Film	Folio	Pages	View Document	Order Copies
<u>DEPT. ACTION FORFEITURE</u>	10/07/2002	11:28-PM					

THE ENTITY WAS FORFEITED FOR FAILURE TO FILE PROPERTY RETURN FOR 2001.

<u>ARTICLES OF ORGANIZATION</u>	07/20/1998	10:48-AM	F4055	1923	0002		
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Link Definition

General Information	General information about this entity
Amendments	Original and subsequent documents filed
Personal Property	Personal Property Return Filing Information and Personal Property Assessments
Certificate of Status	Get a Certificate of Good Standing for this entity.



05/10/99

CHEF GARCIA MEXICAN FOODS 1
Balance Sheet
As of April 30, 1999

	<u>Apr 30, '99</u>
ASSETS	
Current Assets	
Checking/Savings	
FNB CHECKING	275,105.09
Total Checking/Savings	275,105.09
Accounts Receivable	
Accounts Receivable	128,786.14
Total Accounts Receivable	128,786.14
Other Current Assets	
Inventory Asset	-16,620.29
Total Other Current Assets	-16,620.29
Total Current Assets	387,270.94
Fixed Assets	
Office equipment	5,984.70
Office equip accum dep	-117.81
Total Fixed Assets	5,866.89
Other Assets	
Chef Garcia intang.assets	
C G accum amort	-2,021.86
Chef Garcia intang.assets - Other	121,311.55
Total Chef Garcia intang.assets	119,289.69
Deposits	4,680.00
Due from FRAIN	35,000.00
Total Other Assets	158,969.69
TOTAL ASSETS	<u>662,107.52</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	2,076.69
Total Accounts Payable	2,076.69
Other Current Liabilities	
Accrued brokerage	12,252.00
Accrued professional fees	4,500.00
Accrued promotional	23,885.21
Total Other Current Liabilities	40,437.21
Total Current Liabilities	42,513.90
Total Liabilities	42,513.90
Equity	
HR/MR EQUITY	250,000.00
RDK EQUITY	250,000.00
Net Income	9,593.62
Total Equity	509,593.62
TOTAL LIABILITIES & EQUITY	<u>662,107.52</u>

1999 SALES FORECAST

	ACTUAL JAN	ACTUAL FEB	ACTUAL MARCH	ACTUAL APRIL	FRCST MAY	FRCST JUNE	FRCST JULY	FRCST AUG	FRCST SEPT	FRCST OCT	FRCST NOV	FRCST DEC	TOTAL
FOODSERVICE													
Alliant	1,359												
Atlantic	-1,645	4,016	5,143	2,890	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	48,033
Auth Brothers	6,710	3,757	8,493	0	0	0	0	0	0	0	0	0	8,493
Carrol County	346	240	480	0	0	0	0	0	0	0	0	0	480
Chef Garcia Old			14,438	3,059	0	0	0	0	0	0	0	0	17,497
Deaktor Sysco	5,979												
Featherstone		707											
La Union	1,034	3,121	4,955	4,553	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	45,508
Maryland Hotel	5,181	251	2,394	4,219	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	34,613
Smelkinson	978	2,158	2,906	2,748	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	29,654
Standard Foods				2,333									
US Foodservice Balt	4,290	1,802	1,362	6,220	1,000	3,500	3,500	3,500	3,500	3,500	3,500	3,500	33,082
VA Foodservice	715												
Ziggy's	27,702	16,378	36,457	25,076	25,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	286,533
New Business					5,000	10,000	10,000	10,000	15,000	20,000	20,000	20,000	100,000
TOTAL FOODSVCE	51,290	32,430	76,628	51,098	42,000	54,500	59,500	59,500	64,500	69,500	69,500	69,500	699,946
RETAIL													
C&S Wholesale	2,773	3,862	1,567	4,579	2,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	29,146
Giant	50,495	38,775	37,003	70,451	35,000	53,000	40,000	50,000	50,000	65,000	40,000	65,000	505,454
Pastore's	12,683	1,928	3,886	2,719	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	34,605
RF Beyers		1,522	3,699	2,156	5,000	7,000	10,000	10,000	12,000	12,000	12,000	12,000	85,855
Halperin	130,699	149,216	52,036	111,238	150,000	160,000	220,000	150,000	220,000	200,000	180,000	240,000	1,683,274
Fleming					2,400	2,400	7,000	10,000	12,000	12,000	12,000	12,000	67,400
DL Matthews					0	33,000	45,000	40,000	50,000	60,000	45,000	60,000	360,000
TOTAL RETAIL	196,650	195,303	98,191	191,143	222,500	261,900	328,500	266,500	350,500	355,500	295,500	395,500	3,157,687
TOTAL SALES	247,940	227,733	174,819	242,241	264,500	316,400	388,000	326,000	415,000	425,000	365,000	465,000	3,857,633

5/10/99

EXHIBIT

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6

01/16/00

CHEF GARCIA MEXICAN FOODS 1**Profit and Loss**

January through December 1999

	Jan - Dec '99
Ordinary Income/Expense	
Income	
Sales	2,676,860.36
Sales Discounts	-7,929.42
Total Income	2,668,930.94
Cost of Goods Sold	
Brokerage	80,606.00
Cost of Goods Sold	1,661,030.85
Drayage	-9,045.35
Freight	
Freight and Delivery	37,194.72
Freight - Other	33,851.12
Total Freight	71,045.84
Promotional expense	389,456.20
Samples	4,231.51
Spills	24,988.38
Total COGS	2,222,313.43
Gross Profit	446,617.51
Expense	
Amortization Expense	9,276.00
Automobile Expense	130.89
Bad Debt	43,943.78
Bank Service Charges	824.35
Depreciation Expense	2,853.12
Dues and Subscriptions	627.02
Equipment Rental	294.81
Insurance	33,336.84
Marketing	2,410.80
Miscellaneous	10,805.19
Moving expense	522.50
Office Supplies	4,499.02
Payroll	220,028.38
Postage and Delivery	1,793.40
Professional Fees	25,000.00
Rent	18,813.00
Slotting expense	80,556.81
Supplies	
Office	447.88
Supplies - Other	491.65
Total Supplies	939.53
Telephone	10,496.95
Travel & Ent	
Entertainment	325.63
Meals	895.47
Travel	12,784.50
Travel & Ent - Other	15.99
Total Travel & Ent	14,021.59
Uncategorized Expenses	0.00
Total Expense	481,173.98
Net Ordinary Income	-34,556.47
Other Income/Expense	
Other Income	
Other Income	4,520.55
Total Other Income	4,520.55
Net Other Income	4,520.55
Net Income	-30,035.92